

OCT - 4 1994

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20026

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Petition of the People of the State of California)
 and the Public Utilities Commission of the State) PR Docket No. 94-105
 of California Requesting Authority to Regulate)
 Rates Associated With the Provision of Cellular)
 Service Within the State of California)

OPPOSITION OF
U S WEST CELLULAR OF CALIFORNIA, INC.

U S WEST Cellular of California, Inc. ("U S WEST") respectfully submits this opposition to the Request filed by the National Cellular Resellers Association ("NCRA")¹ for access to materials submitted on a confidential redacted basis by the California Public Utilities Commission ("CPUC").²

The material submitted under seal by the CPUC should not be provided to NCRA or any other party because it contains industry and carrier-specific information which the CPUC recognizes is confidential and commercially sensitive, as well as confidential information compiled as part of an incomplete state attorney general investigation. The redacted material

¹ See Request for Access to California Petition for State Regulatory Authority Pursuant to the Terms of a Protective Order ("NCRA Request").

² See CPUC Request for Proprietary Treatment of Documents Used in Support of Petition to Retain Regulatory Authority Over Intrastate Cellular Service Rates, filed August 8, 1994 ("CPUC Request"). By Public Notice, dated August 12, 1994, the Commission noted that pending a determination on the CPUC Request, the material submitted under seal would not be made available for review or comment (DA 94-876). Thereafter, on September 13, 1994, the CPUC filed with the Commission portions of its Petition containing previously redacted information which it determined was in fact publicly available. See Ex Parte Letter from Ellen S. Levine, Principal Counsel CPUC to William F. Caton, Acting Secretary, FCC. By Order, released September 26, 1994, the Private Radio Bureau extended the time for reply comments until October 19, 1994, in part to allow parties to comment on the revised material submitted by the CPUC. DA 94-1054 ("Order").

should instead be returned by the Commission and not made part of the decision-making record in this proceeding.³

NCRA seeks disclosure of sensitive and proprietary information CPUC submitted with a request for confidential treatment. The CPUC specifically requested that this material “not be made available for public inspection or otherwise be publicly disclosed.” CPUC Request at 1. The CPUC advised this Commission that the materials for which confidential treatment was sought:

contain proprietary data and materials concerning commercially sensitive information not customarily released to the public which, if disclosed, could compromise the position of a cellular carrier relative to other carriers in offering service in various markets in California.

Id. at 1-2. More particularly, based on the CPUC’s representations, much of the redacted information concerns capacity utilization information, subscriber and financial data for various California cellular carriers. Id. at 2. This data was provided by U S WEST and other California carriers to a state Administrative Law Judge (“ALJ”) in the context of the CPUC investigation into the wireless industry (Docket No. I-93-12-007). It was submitted by the carriers under seal, however,⁴ and the ALJ determined that the information was commercially sensitive and that public disclosure of such information would cause “imminent and direct harm of major

³ As an initial matter, it should be noted that the NCRA Request was filed on September 19, 1994, the due date for comments in this proceeding. NCRA provides no explanation for its untimely request for access to the redacted information submitted by the CPUC. Moreover, its request for an opportunity to file amended comments suggests that it may be seeking an opportunity to file supplemental comments with no opportunity for replies. The FCC should not countenance this strategy.

⁴ In this regard, U S WEST states for the record herein that it does not waive its rights to require confidential treatment of information submitted by it under seal to the CPUC pursuant to terms of the ALJ rulings in I-93-12-007.

consequence.”⁵ Disclosure of this information would cause competitive harm to California cellular carriers. Moreover, disclosure of cellular pricing information among competitors poses obvious antitrust concerns. The submission of this material to the FCC violates CPUC requirements and state law concerning the disclosure of confidential information, and this Commission has no authority to even consider the disclosure of this confidential information until such time as these state procedures are followed.⁶

The other information submitted under seal by the CPUC was obtained by the CPUC from the California Attorney General (“AG”). According to the CPUC, this material concerns an “ongoing investigation” regarding cellular industry compliance with antitrust laws. CPUC Request at 2. This information was provided to the CPUC by the state AG on the condition that it would be treated confidentially and filed under seal with the Commission. See id. While U S WEST does not know what the AG information consists of, clearly no

⁵ See Administrative Law Judge’s Ruling Granting Motion for Modification of July 19, 1994 Ruling, Docket No. I-93-12-007 (August 8, 1994) at 4. See also ALJ Ruling of July 19, 1994.

⁶ CPUC General Order No. 66-C excludes from the definition of public records “all records or information of a confidential nature furnished to or obtained by the Commission.” The redacted material submitted under seal by the CPUC falls within this exclusion. Under Section 583 of the California Public Utilities Code:

No information furnished to the Commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this part, shall be open to public inspection or made public except on order of the Commission.

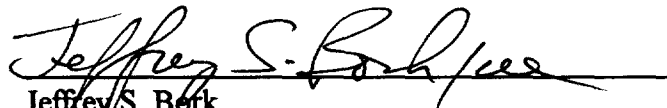
No order has been issued by the CPUC which would allow public disclosure of the commercial information submitted under seal by the California carriers in the wireless investigation.

adjudication has occurred and no decisions have been reached with respect to this matter. As such, any reliance on this investigatory information would be entirely inappropriate.

In sum, none of the material at issue should have been filed with the Commission in the first place -- even under seal. Under law and pursuant to the ALJ's rulings in the CPUC wireless investigation, the material is confidential and it should remain so. The NCRA Request has the potential to improperly delay consideration of the California Petition,⁷ and to unlawfully expand its scope. NCRA has provided no compelling reason to support disclosure. The redacted CPUC material should be returned to the CPUC without consideration, and the NCRA Request should be denied.

Respectfully submitted,

U S WEST CELLULAR OF CALIFORNIA, INC.


Jeffrey S. Berk
1801 California St., Suite 5100
Denver, CO 80202
(301) 672-2700

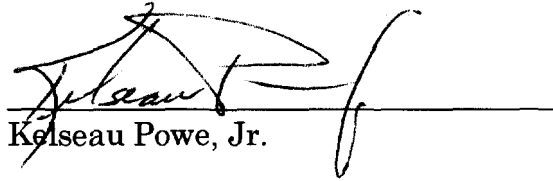
Laurie Bennett,
Of Counsel

October 4, 1994

⁷ As recognized by the Commission, Congress has imposed "stringent statutory deadlines. . ." for consideration and resolution of the state petitions. See Order at 2, ¶ 5.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr. do hereby certify that on this 4th day of October, 1994, I have caused a copy of the foregoing **OPPOSITION OF U S WEST CELLULAR OF CALIFORNIA, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

***Via Hand-Delivery**

(PR94105.COS/JB/lh)

*Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*James H. Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Andrew C. Barrett
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Gerald P. Vaughan
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Ralph A. Haller
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
Suite 140
2100 M Street, N.W.
Washington, DC 20037

*John Cimko, Jr.
Federal Communications Commission
Room 644
1919 M Street, N.W.
Washington, DC 20554

*Edward R. Jacobs
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

*Regina Harrison
Federal Communications Commission
Room 5202
2025 M Street, N.W.
Washington, DC 20554

Mary B. Cranston
Megan Waters Pierson
Joseph A. Hearst
Pillsbury Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120-7880

AIRTOUCH

David A. Gross
Kathleen Q. Abernathy
AirTouch Communications
Suite 800
1818 N Street, N.W.
Washington, DC 20036

Edward W. O'Neill
Peter Arth, Jr.
Ellen S. Levine
State of California Public Utilities
Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Howard J. Symons
James A. Kirkland
Cherie R. Kiser
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

MCCAW

James M. Tobin
Mary E. Wand
Morrison & Foerster
345 California Street
San Francisco, CA 94104-2576

MCCAW

Scott K. Morris
McCaw Cellular Communications, Inc.
5400 Carillon Point
Kirkland, WA 98033

Richard McKenna
GTE Service Corporation
600 Hidden Ridge
Irving, TX 75015-2092

William J. Sill
Christine M. Crowe
McFadden, Evans & Sill
Suite 810
1627 Eye Street, N.W.
Washington, DC 20006

GTE

Peter A. Casciato, P.C.
Suite 701
8 California Street
San Francisco, CA 94111

CRA

Lewis J. Paper
Keck, Mahin & Cate
1201 New York Avenue, N.W.
Washington, DC 20005

CRA

Michael F. Altschul
Randall S. Coleman
Andrea D. Williams
Cellular Telecommunications
Industry Association
Suite 200
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Michael B. Day
Michael J. Thompson
Jerome F. Candelaria
Wright & Talisman
Suite 225
Shell Building
100 Bush Street
San Francisco, CA 94104

CAOC

David A. Simpson
Young, Vogl, Harlick & Wilson
Suite 2500
425 California Street
San Francisco, CA 94104

BCTC

LCTC

Adam A. Anderson
Suzanne Toller
Bay Area Cellular Telephone
Company
Suite 1500
651 Gateway Boulevard
South San Francisco, CA 94080

Thomas Gutierrez
J. Justin McClure
Lukas, McGowan, Nace & Gutierrez
Suite 1200
1111 19th Street, N.W.
Washington, DC 20036

MTTC

Joel H. Levy
William B. Wilhelm, Jr.
Cohn and Marks
Suite 600
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

NCRA

Michael Shames
Suite 105
1717 Kettner Boulevard
San Diego, CA 92101

UCAN & TURN

Cellular Agents Trade Association
Kolodny & Pressman
Suite 201
11975 El Camino Real
San Diego, CA 92130